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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/598,987	08/30/2012	Madhu K. Chetuparambil	IN920110206US2(790.142C)	1021

89885 7590 06/08/2017
FERENCE & ASSOCIATES LLC
409 BROAD STREET
PITTSBURGH, PA 15143

EXAMINER

MANSFIELD, THOMAS L

ART UNIT	PAPER NUMBER
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3623

MAIL DATE	DELIVERY MODE
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06/08/2017

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MADHU K. CHETUPARAMBIL, KALAPRIYA KANNAN,
and GEORGE T. JACOB SUSHIL

Appeal 2016-006814
Application 13/598,987¹
Technology Center 3600

Before LARRY J. HUME, JOYCE CRAIG, and MATTHEW J. McNEILL,
Administrative Patent Judges.

McNEILL, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–6 and 9–12, which are all the claims pending in this application.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is International Business Machines Corporation. App. Br. 3.

² Claims 7 and 8 are canceled. App. Br. 19 (Claims Appx.).

STATEMENT OF THE CASE

Introduction

Appellants' application relates to obtaining market intelligence through social media. Spec. ¶ 16. Different sources of data are integrated and several types of business intelligence analysis are performed and made available to consumers on an on-demand basis. *Id.* Claim 1 is illustrative of the appealed subject matter and reads as follows:

1. A method comprising:
 - utilizing at least one processor to execute computer code configured to perform the steps of:
 - inputting guidelines for deriving mercantile intelligence with relation to a product;
 - mining social content data with relation to the product, the social content data comprising user-generated content with relation to the product;
 - generating a map which reconciles the social content data with the guidelines, the social content data including language-based terms expressed in social content;
 - extracting from the map elements related to mercantile intelligence, the elements comprising product-related features to which the social content language-based terms are mapped; and
 - outputting a mercantile intelligence report with relation to the product, via determining a product utility value;
 - said determining of a product utility value comprising:
 - determining a weighted sum of expected attribute utility values; and
 - determining an exponential component for modeling a natural decay in a value of a product during its lifetime.

The Examiner's Rejection

Claims 1–6 and 9–12 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 3–5.

Related Case

The present application is a continuation under 35 U.S.C. § 120 of parent U.S. Application No. 13/316,950, which is also before this panel on appeal (Appeal 2016-006842).

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' contentions the Examiner erred. We disagree with Appellants' contentions. Except as noted below, we adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusions reached by the Examiner. We highlight the following additional points.

Appellants argue the Examiner erred because the rejection is lacking in meaningful detail and “little more than a hollow set of arguments without basis.” App. Br. 11. Appellants also argue the Examiner “over-interpreted claimed elements” and “mischaracterizes the currently claimed features.” App. Br. 12. Appellants argue “the embodiments of the invention, as broadly claimed, go well beyond a mere ‘abstract idea.’” *Id.* According to Appellants, there is a “level of sophistication in [the] single elements and the totality of elements that significantly transcend ‘mere instructions to implement the idea on a computer, or . . . recitation of generic computer structure’” App. Br. 14.

Alice identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101. Assuming that a claim nominally falls within one of the statutory categories of machine, manufacture, process, or composition of matter, the first step in the analysis is to determine if the claim is directed to a law of nature, a natural phenomenon, or an abstract idea (judicial exceptions). *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S.Ct. 2347, 2355 (2014). If so, the second step is to determine whether any element or combination of elements in the claim is sufficient to transform the nature of the claim into a patent eligible application, that is, to ensure that the claim amounts to significantly more than the judicial exception. *Id.*

We agree with the Examiner that claim 1 recites “the abstract idea of generating a mercantile intelligence report relating to products.” Final Act. 3. Our reviewing court has explained:

[T]he “realm of abstract ideas” includes “collecting information, including when limited to particular content.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir.2016) (collecting cases). We have also “treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.” *Id.* And we have found that “merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.” *Id.*

FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

As in *FairWarning*, the claims here “are directed to a combination of these abstract-idea categories.” *Id.* Specifically, the claims here recite steps of gathering information (social content data and guidelines for deriving

mercantile intelligence), analyzing that information (generating a map to reconcile social content data with the guidelines), and presenting that information (outputting a mercantile intelligence report by determining a product utility value). And like in *FairWarning*, “[w]hile the claims here recite using one of a few possible rules to analyze the [data], this does not make them eligible under our decision in *McRO, Inc. v. Bandai Namco Games America Inc.*, No. 15–1080, 837 F.3d 1299, 2016 WL 4896481 (Fed. Cir. Sept. 13, 2016), which also involved claims reciting rules.” *FairWarning*, 839 F.3d at 1093–94. Accordingly, we agree with the Examiner that claim 1 is directed to an “abstract idea.”

Regarding step two, Appellants argue claim 1 recites “significantly more” because it uses “at least one processor . . . to carry out one or more steps that the Office might otherwise misinterpret as a mere ‘abstract idea.’” App. Br. 13. However, using a processor—a generic computer component—to perform a method does not impart patentability. Our reviewing court “found similar claims to be ineligible despite the recitation of a general purpose computer or the Internet.” *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1334 (Fed. Cir. 2015) (collecting cases). As in *Versata*, the claims here “do not improve some existing technological process or solve some technological problem in conventional industry practice.” *Id.* Similarly,

[T]he claims at issue are not rooted in computer technology to solve a problem specifically arising in some aspect of computer technology. Instead, the claims at issue are more like the claims we summarized in *DDR Holdings* as insufficient to reach eligibility—claims reciting a commonplace business method aimed at processing business information despite being applied on a general purpose computer.

Id. Accordingly, we agree with the Examiner that the claims do not recite an “inventive concept” sufficient to transform the claims from an abstract idea to a patent eligible application.

The Examiner also found claims 1–6 and 9–12 are directed to non-statutory subject matter because they encompass transient instructions or signals *per se*. Final Act. 4–5. Appellants argue the Examiner erred because the claimed method is “performed via utilizing at least one processor to execute computer code, which would appear more than sufficient for related purposes under Section 101.” App. Br. 16.

Claim 1 recites a method comprising “utilizing at least one processor to execute computer code configured to perform” certain steps. Claim 1 does not recite any storage media for the executed computer code, including any non-transitory computer readable media. The Specification states the computer system “typically includes a variety of computer system readable media. Such media may be any available media that is accessible by computer system/server 12’, and it includes both volatile and non-volatile media” Spec. ¶ 30. The system memory “can include computer system readable media in the form of volatile memory.” Spec. ¶ 31. The Specification does not state that the computer readable media is limited to non-transitory signals. Accordingly, claim 1 is properly construed to encompass transitory signals. *See Ex parte Mewherter*, 107 USPQ2d 1857 (PTAB 2013) (precedential) (holding recited machine-readable storage medium ineligible under § 101 since it encompasses transitory media). Further, transitory signals are unpatentable as non-statutory subject matter. *See In re Nuijten*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007). Accordingly,

we agree with the Examiner that claim 1 encompasses nonstatutory subject matter.

For these reasons, Appellants have not persuaded us the Examiner erred in rejecting claim 1 as directed to nonstatutory subject matter. On this record, we, therefore, sustain the rejection of claim 1. We also sustain the rejections of dependent claims 2–6 and 9–12, which are not argued separately (App. Br. 11).

DECISION

We affirm the decision of the Examiner to reject claims 1–6 and 9–12.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED